

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAMIAN JAMAR FERGUSON, )  
Petitioner, )  
v. ) 1:11CV1046  
 ) 1:08CR93-2  
 )  
UNITED STATES OF AMERICA, )  
 )  
Respondent. )

ORDER

On March 14, 2013, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. No objections to the Recommendation have been filed. Therefore, the Court need not make a *de novo* review and the Magistrate Judge's Recommendation [Doc. #110] is hereby adopted.

IT IS THEREFORE ORDERED that Petitioner's Motion to Vacate, Set Aside or Correct Sentence [Doc. #71], as amended [Doc. #72], is GRANTED as to his claim under Simmons, and the Amended Judgment [Doc. #58] is VACATED. The Clerk is directed to set this matter for resentencing. Petitioner remains in custody, and the United States Attorney is directed to produce Petitioner for the resentencing hearing. The Probation Office is directed to prepare a Supplement to the Presentence Investigation Report in advance of the hearing. Counsel will be appointed to represent

Petitioner at the resentencing hearing.

This the 19<sup>th</sup> day of April, 2013.

/s/ N. Carlton Tilley, Jr.  
Senior United States District Judge